

1 David W. Affeld, State Bar No. 123922  
Damion Robinson, State Bar No. 262573  
2 Affeld Grivakes LLP  
2049 Century Park East, Ste. 2460  
3 Los Angeles, CA 90067  
Telephone: (310) 979-8700  
4

5 Attorneys for Plaintiff  
Michael Zeleny  
6  
7  
8

9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 MICHAEL ZELENY,

12 Plaintiff,

13 vs.

14 GAVIN NEWSOM, *et al.*,

15 Defendants.  
16  
17  
18

Case No. CV 17-7357 RS

Assigned to:

The Honorable Richard G. Seeborg

**DECLARATION OF DAMION  
ROBINSON IN SUPPORT OF  
PLAINTIFF'S MOTION TO SHORTEN  
TIME ON MOTION TO CONTINUE  
TRIAL AND PRE-TRIAL DATES**

Action Filed: December 28, 2017

Trial Date: November 18, 2019  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 I, Damion Robinson, declare:

2 1. I and my law firm are counsel of record to plaintiff Michael Zeleny (“Zeleny”). I  
3 have personal knowledge of these facts. I could testify competently to them if called upon to do so.

4 2. Concurrently with this motion, I am filing a Motion to Continue Trial and Pre-Trial  
5 Dates (the “Motion to Continue”). I am filing that motion based on the fact that the pleadings are  
6 unsettled as to defendant New Enterprise Associates, Inc. (“NEA”). This has prevented the parties  
7 from completing discovery.

8 3. I am requesting an order shortening time to hear the Motion to Continue because,  
9 under the Court’s standard scheduling rules, the Motion to Continue cannot be heard until August 8,  
10 2019 at the earliest. This date is after the current close of discovery, July 19, and the current expert  
11 disclosure deadline, August 1, 2019.

12 4. This became an issue only recently. NEA moved to dismiss and set a hearing for  
13 June 13. That motion remains under submission at this time. In addition, for the reasons set out in  
14 the next paragraph, I have been unable to reach counsel for defendants the City of Menlo Park and  
15 Dave Bertini (collectively, the “City”).

16 5. I have attempted to obtain a stipulation to the underlying Motion to Continue and to  
17 shortening time from all opposing counsel. Counsel for NEA and defendant Xavier Becerra  
18 (“Becerra”) have agreed both to a continuance of trial and pretrial dates and to shortening time to  
19 hear this motion. A true copy of my email exchange with counsel is attached as **Exhibit 1**.

20 6. I have been unable to reach counsel for the City. I initially contacted counsel for all  
21 parties on Monday, June 24, 2019 to address scheduling and discovery issues. I received an “out-of-  
22 office” email from counsel for the City, Todd Master, indicating that he will be unavailable until  
23 July 8. The email provided contact information for his assistant. I called Mr. Master’s assistant on  
24 June 28, 2019 and left a message asking if anyone else at the firm could assist us with discovery  
25 scheduling. I have not received a response or return call.

26 7. The parties will be substantially prejudiced without an order shortening time because  
27 they need the Court’s guidance on the remaining schedule before the current discovery  
28 cutoff. Due to the status of NEA it is not feasible to complete discovery on the current

1 timetable. Until the pleadings are settled as to NEA, the parties cannot determine the scope of  
2 discovery or the extent of NEA's involvement in the discovery process. This will impact the  
3 remaining trial and pretrial dates as well, including expert discovery and dispositive motions.

4 8. It would not be feasible or prudent to attempt to complete discovery without resolving  
5 the issues as to NEA. Doing so would likely result in a duplication of efforts if NEA elects to take  
6 its own discovery. In addition, the claims against NEA will impact the scope of discovery taken by  
7 other parties and may impact needed experts.

8 9. No previous trial continuances have been requested or issued in this case. In  
9 February 2019, the Court approved a stipulated continuance of certain discovery deadlines due to  
10 NEA moving to quash a subpoena directed to it. In April, the Court modified certain pretrial dates  
11 due to the addition of NEA as a party. Because the pleadings remain unsettled, it is now clear that  
12 an additional continuance is needed, including a continuance of trial.

13 10. The motion to shorten time will not impact any other dates in this case. Zeleny is  
14 making this motion so that the Motion to Continue can be heard before the discovery and initial  
15 expert disclosure deadlines.

16 I declare under penalty of perjury under the laws of the United States that the foregoing is  
17 true and correct. Executed June 28, 2019 at Los Angeles, California

18 s/ Damion Robinson  
19 Damion Robinson  
20  
21  
22  
23  
24  
25  
26  
27  
28



## Damion Robinson

---

**From:** Damion Robinson  
**Sent:** Friday, June 28, 2019 2:37 PM  
**To:** RLane@foley.com; Noreen Skelly; Todd H. Master  
**Subject:** RE: Zeleny/Newsom - Motion to Continue Dates and Shorten Time for Hearing

Thank you. I will fix it in the motion and order.

-----Original Message-----

From: RLane@foley.com <RLane@foley.com>  
Sent: Friday, June 28, 2019 2:33 PM  
To: Noreen Skelly <Noreen.Skelly@doj.ca.gov>; Damion Robinson <DR@agzlaw.com>; Todd H. Master <tmaster@hrmrlaw.com>  
Subject: RE: Zeleny/Newsom - Motion to Continue Dates and Shorten Time for Hearing

Sorry -- just caught that the last date should be 2020, not 2010

Sent from Workspace ONE Boxer

On Jun 28, 2019 4:22 PM, Damion Robinson <DR@agzlaw.com> wrote:

\*\* EXTERNAL EMAIL MESSAGE \*\*

Last email from me today. We need to update the pretrial conference as well. Here is the finished schedule.

Discovery Cut-Off:	November 15, 2019
Expert Disclosures:	November 29, 2019
Rebuttal Experts:	December 20, 2019
Expert Discovery Cut-Off:	January 10, 2020
Dispositive Motions:	February 6, 2020
Pre-trial Conference:	May 20, 2020
Start of Trial:	June 1, 2010

Could you both confirm?

-----Original Message-----

From: RLane@foley.com <RLane@foley.com>  
Sent: Friday, June 28, 2019 12:45 PM  
To: Noreen Skelly <Noreen.Skelly@doj.ca.gov>; Damion Robinson <DR@agzlaw.com>; Todd H. Master <tmaster@hrmrlaw.com>  
Subject: RE: Zeleny/Newsom - Motion to Continue Dates and Shorten Time for Hearing

Yes, fine.

Sent from Workspace ONE Boxer

On Jun 28, 2019 3:43 PM, Damion Robinson <DR@agzlaw.com> wrote:

\*\* EXTERNAL EMAIL MESSAGE \*\*

That is absolutely fine with us.

How about June 1, 2020 for trial (the first available date after Memorial day), and February 6 for dispositive motions.

Roger, does that work for you?

-----Original Message-----

From: Noreen Skelly <Noreen.Skelly@doj.ca.gov>

Sent: Friday, June 28, 2019 12:40 PM

To: Damion Robinson <DR@agzlaw.com>; RLane@foley.com; Todd H. Master <tmaster@hmrmlaw.com>

Subject: RE: Zeleny/Newsom - Motion to Continue Dates and Shorten Time for Hearing

Damion,

I'm willing to work with you to amend the schedule. However, I'm unavailable December 9th-25th, and I have a month-long trial beginning March 31, 2020. Thus, I would like to push out the deadline for hearing dispositive motions and trial date. I would suggest the deadline for dispositive motions be pushed to early February and trial be pushed to late May. I don't know whether those proposed changes will work for everyone else.

Noreen

Noreen P. Skelly, Deputy Attorney General Government Law Section California Department of Justice, Office of the Attorney General

Telephone: (916) 210-6057

-----Original Message-----

From: Damion Robinson <DR@agzlaw.com>

Sent: Friday, June 28, 2019 12:21 PM

To: RLane@foley.com; Noreen Skelly <Noreen.Skelly@doj.ca.gov>; Todd H. Master <tmaster@hmrmlaw.com>

Subject: RE: Zeleny/Newsom - Motion to Continue Dates and Shorten Time for Hearing

Thank you. So that everyone is aware this is the schedule we're currently proposing. I assume the Court will adjust it to fit the Court's schedule.

Discovery Cut-Off:	November 15, 2019
Expert Disclosures:	November 29, 2019
Rebuttal Experts:	December 20, 2019
Expert Discovery Cut-Off:	January 10, 2020
Dispositive Motions:	January 10, 2020
Pre-trial Conference:	March 4, 2020
Start of Trial:	March 16, 2020

Because Todd is on vacation, we'll need to make a motion. But, can we indicate everyone else's agreement to the above and to shortening time?

Thanks

-----Original Message-----

From: RLane@foley.com <RLane@foley.com>

Sent: Friday, June 28, 2019 12:14 PM

To: Noreen Skelly <Noreen.Skelly@doj.ca.gov>; Damion Robinson <DR@agzlaw.com>; Todd H. Master <tmaster@hrmrlaw.com>

Subject: RE: Zeleny/Newsom - Motion to Continue Dates and Shorten Time for Hearing

Both.

Sent from Workspace ONE Boxer

On Jun 28, 2019 3:11 PM, Damion Robinson <DR@agzlaw.com> wrote:

\*\* EXTERNAL EMAIL MESSAGE \*\*

Roger:

Are you agreeing to the 120 day extension, to shortening time on a motion to continue, or to both?

Regards,

-----Original Message-----

From: RLane@foley.com <RLane@foley.com>

Sent: Friday, June 28, 2019 12:10 PM

To: Noreen Skelly <Noreen.Skelly@doj.ca.gov>; Damion Robinson <DR@agzlaw.com>; Todd H. Master <tmaster@hrmrlaw.com>

Subject: Zeleny/Newsom - Motion to Continue Dates and Shorten Time for Hearing

I can assent to that. Thank you.

Sent from Workspace ONE Boxer

On Jun 28, 2019 3:07 PM, Damion Robinson <DR@agzlaw.com> wrote:

\*\* EXTERNAL EMAIL MESSAGE \*\*

Counsel:

We have attempted to informally resolve the discovery scheduling issues due to the uncertainty surrounding NEA's status. We have been unable to reach consensus or to determine everyone's position due to Mr. Master being out of town until July 8 and NEA declining to take a position.

Accordingly, we are planning to file today a motion to continue the current schedule by 120 days, and a motion to shorten time so that the continuance motion is heard on July 8. We are requesting that any oppositions be filed by July 5.

Please let me know your position on the two motions. In particular, we need to know whether you will oppose shortening time. As the current discovery cutoff is July 19, we do not see an option but to request an expedited ruling.

Regards,

Damion Robinson  
Affeld Grivakes LLP  
2049 Century Park East, Suite 2460  
Los Angeles, CA 90067  
Tel. (310) 979-8700 | Fax (310) 979-8701

\* \* \*

**PROOF OF SERVICE**

I hereby certify that on June 28, 2019, I electronically filed the foregoing document using the Court's CM/ECF system. I am informed and believe that the CM/ECF system will send a notice of electronic filing to the interested parties.

s/ Damion Robinson  
Damion Robinson